



ALAN WILSON  
ATTORNEY GENERAL

April 13, 2017

The Honorable Bill Sandifer, Member  
South Carolina House of Representatives  
407 Blatt Building  
Columbia, SC 29211

Dear Representative Sandifer:

Attorney General Alan Wilson has referred your letter dated March 13, 2017 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

**Issue** (as quoted from your letter):

*"[W]hether Article 3 of Chapter 13, Title 6 confers upon the Pioneer Rural Water District of Oconee and Anderson Counties the power to contract for or undertake the construction of new freshwater treatment facilities? Your Office issued an opinion on the same question at my request on April 30, 2012. ... I would like to request an updated opinion to verify that opinion remains the opinion of your office today."*

**Law/Analysis:**

As you mention in your letter, this Office previously opined regarding this same question on April 30, 2012. See Op. S.C. Att'y Gen., 2012 WL 1649764 (S.C.A.G. April 30, 2012). Traditionally, this Office does not overrule a prior opinion unless there has been a change in the law or where there is clear error. See, e.g., Ops. S.C. Att'y Gen., 2017 WL 1290050 (S.C.A.G. March 24, 2017); 2013 WL 6516330 (S.C.A.G. November 25, 2013); 2013 WL 3762706 (S.C.A.G. July 1, 2013); 2009 WL 959641 (S.C.A.G. March 4, 2009); 2006 WL 2849807 (S.C.A.G. September 29, 2006); 2005 WL 2250210 (S.C.A.G. September 8, 2005); 1986 WL 289899 (S.C.A.G. October 3, 1986); 1984 WL 249796 (S.C.A.G. April 9, 1984). However, on June 26, 2012 South Carolina House Bill No. 4801 became law and amended Sections 6-13-230, 6-13-240 and 6-13-250. Act No. 276, 1996 S.C. Acts (H.B. 4801). Thus, there has been a change in the applicable law since the April 30, 2012 opinion by this Office. The 2012 amendment stated its purpose as follows:

AN ACT TO AMEND SECTION 6-13-230, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PIONEER RURAL WATER DISTRICT OF OCONEE AND ANDERSON COUNTIES, SO AS TO FURTHER PROVIDE FOR THE QUALIFICATIONS, TERMS, AND MANNER OF SELECTION OF MEMBERS OF THE GOVERNING BOARD OF THE DISTRICT; TO AMEND SECTION 6-13-240, AS AMENDED, RELATING TO THE POWERS AND DUTIES OF THE DISTRICT ACTING THROUGH ITS GOVERNING BOARD, SO AS TO PROVIDE THAT BEFORE THE DISTRICT MAKES AN INVESTMENT IN A FACILITY OR TAKES ANY OTHER ACTION THAT WOULD OBLIGATE THE DISTRICT FOR ONE MILLION

DOLLARS OR MORE, IT MUST PROVIDE FOR AN INDEPENDENT AUDIT, TO PROVIDE FOR HOW THE AUDIT MUST BE CONDUCTED AND FOR A MEETING OF THE DISTRICT'S CUSTOMERS ABOUT THE AUDIT'S FINDINGS, AND FOR SUBMISSION OF THE AUDIT TO THE OFFICE OF REGULATORY STAFF FOR COMMENT; AND TO AMEND SECTION 6-13-250, RELATING TO THE NONREGULATION OF RATES OF THE DISTRICT, SO AS TO PROVIDE THAT THE BOARD MUST PROVIDE TO THE OFFICE OF REGULATORY STAFF BY JULY FIRST EACH YEAR SCHEDULES SHOWING ALL RATES, SERVICE RULES AND REGULATIONS, AND FORMS OF SERVICE CONTRACT ESTABLISHED BY THE BOARD.

PIONEER RURAL WATER DISTRICT OF OCONEE AND ANDERSON COUNTIES—BOARDS AND COMMISSIONS—AUDITS AND AUDITORS, Act No. 276, 2012 S.C. Acts (H.B. 4801). The 2012 opinion by this Office concluded that:

*The primary purpose of the Pioneer Rural Water District of Oconee and Anderson Counties is to “acquire, construct, and operate a waterworks system” for its service area. This system is to include “water mains, distribution facilities, tanks, their several component parts, and all apparatus, equipment and property incident thereto or used or useful in the operation thereof and all additions, improvements, extension and enlargements to any of them.” Such a system does not, by its plain language, include a water treatment facility. However, South Carolina Code section 6-13-240 empowers the District to exercise “all such powers as may be necessary or incidental to carry out its purposes, functions and responsibilities.” Thus, if a court found that the construction of a new freshwater treatment facility was necessary to the District’s water distribution function, it might find the District had authority to take such action. In light of the fact that the District currently obtains water from other available sources, a determination whether a new treatment facility is necessary likely would involve questions of fact, which are beyond the scope of this opinion.*

Op. S.C. Att’y Gen., 2012 WL 1649764 (S.C.A.G. April 30, 2012). We believe a court will determine that because the 2012 legislation did not change South Carolina Code § 6-13-240’s language (“(8) to build, construct, maintain, and operate distribution systems... (10) to contract for or otherwise acquire a supply of water and sell water for industrial or domestic use,” etc.) or other such language expressed in the 2012 opinion’s conclusion, the 2012 opinion’s conclusions are consistent with the General Assembly’s intent. Moreover, the General Assembly’s 2012 amendment to South Carolina Code § 6-13-240 requiring in Section (B) an independent financial audit before the water district obligates itself for one million or more dollars and in Section (C) submission of the audit to the Office of Regulatory Staff do not change the conclusion of the 2012 opinion, nor do the other changes in the 2012 amendment. It is also this Office’s understanding there have been no changes to South Carolina Code § 6-13-210 et seq. since 2012 other than one bill that is currently pending. The pending legislation we saw was S.C. House Bill No. 4091 of the 2017-2018 session, of which you are the sponsor.

**Conclusion:**

Therefore, it is for all of the above reasons, while we acknowledge there has been a change in the law since our April 30, 2012 opinion, we still affirm the conclusions therein and believe a court will likely

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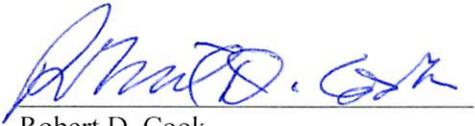
find that, consistent with our April 30, 2012 opinion, South Carolina Title 6, Chapter 13, Article 3 bestows the power on the Pioneer Rural Water District of Oconee and Anderson Counties to “acquire, construct and operate a waterworks system”<sup>1</sup> for the distribution of water including “to build, construct, maintain, and operate distribution systems”<sup>2</sup> and by implication, contingent upon a finding of necessity,<sup>3</sup> to construct or contract for a water treatment facility, subject to the statutory limitations (including an independent audit,<sup>4</sup> etc.). However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

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<sup>1</sup> S.C. Code § 6-13-210.

<sup>2</sup> S.C. Code § 6-13-240(A)(8).

<sup>3</sup> As discussed in the April 30, 2012 opinion. See Op. S.C. Att’y Gen., 2012 WL 1649764 (S.C.A.G. April 30, 2012).

<sup>4</sup> See, e.g., S.C. Code § 6-13-240(B).